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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,487	12/13/2001	Eugen Schwarz	MERCK 2330	1803

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EXAMINER	
RINEHART, KENNETH	

ART UNIT	PAPER NUMBER
3749	

DATE MAILED: 01/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/009,487	SCHWARZ ET AL.	
	Examiner	Art Unit	
	Kenneth B Rinehart	3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 December 2003*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *10,11,13-17 and 19-26* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *10,11,13 and 23-25* is/are rejected.

7)☒ Claim(s) *14-17* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) ☐ The translation of the foreign language provisional application has been received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

Response to Arguments

Applicant's arguments filed 11/20/03 have been fully considered but they are not persuasive. The applicant argues that Getle does not teach a spray drying unit and one or more additional spray atomization spray nozzles for a liquid media in a spray tower. The examiner disagrees as numeral 3 represents the spray atomization nozzles which is located vertically above a downstream fluidized bed (7, fig. 1) in a spray tower (6, fig. 1). The applicant next argues that there is insufficient motivation. The examiner disagrees. One of ordinary skill in the art would be aware that by utilizing the compact design of Getler, as opposed to that of Pisecky et al, material savings could be achieved by eliminating the need for two vessels as opposed to one. Applicant next argues that there is no motivation to include a fan. The examiner respectfully disagrees as the reference discloses a blower which provides the motive force. Once again an individual of ordinary skill would be aware that a fan would be needed to provide the motive force to allow the apparatus to operate.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 24 and 25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 24 and 25 refer to a filter for filtering the gas exiting the spray tower, the spray drying unit is located in a spray tower above the fluidized bed which is downstream which

was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 10, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pisecky et al in view of Getler et al. Pisecky et al discloses a spray drying unit (3, fig. 1), a fluidized bed (6, fig. 1), one or more additional spray or atomization nozzles for liquid media (8, fig. 1), a powder metering device (fig. 3, 4 and 5), a powder return with fan (20, fan at left end of 20, fig. 1), liquid media (4, fig. 1), spray air (20, fig.1), pulverent material (20, fig. 1), and hot air (1, fig. 1), are combined in the spray drying unit (3, fig. 1). Pisecky et al discloses applicant's invention substantially as claimed with the exception of a spray drying unit is located vertically above a downstream fluidized bed in a spray tower, the spray drying plant produces particles of 50-1000 micrometer. Getler et al teaches a spray drying unit is located vertically above a downstream fluidized bed in a spray tower (6, fig. 1) for the purpose of providing a more compact design. It would have been obvious to one of ordinary skill in the art to modify Pisecky et al by including a spray drying unit is located vertically above a downstream fluidized bed in a spray tower as taught by Getler et al for the purpose of providing a more compact design to reduce manufacturing costs. Pisecky et al in view of Getler et al discloses applicant's invention

substantially as claimed with the exception of the spray drying plant produces particles of 50-1000 micrometer. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have 50-1000 micrometer particles because Applicant has not disclosed that the size of the particles provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with either the particles of Pisecky et al or the claimed particles because both particles perform the same function equally well.

Claims 10-11, 13, 23, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaffer et al in view of Hansen. Shaffer et al discloses a spray drying unit (26, fig. 2), a fluidized bed (24, fig. 2), one or more additional spray or atomization nozzles for liquid media (22, fig. 2), a powder metering device (38, fig.1), a powder return (15, 48, fig. 1), one or more additional spray or atomization nozzles can be installed in the fluidized bed at variable locations (22, fig. 2), liquid media (29, fig. 1), spray air (30, fig.1), pulverent material (19, fig. 1), and hot air (31, fig. 1), are combined in the spray drying unit (26, fig. 2), a spray drying unit is located vertically above a downstream fluidized bed in a spray tower (22, fig. 2). Shaffer discloses applicant's invention substantially as claimed with the exception of with fan, a filter for filtering the gas exiting the spray tower. Hansen teaches with fan (left of item 12, fig. 1) for the purpose of providing a force to move the material. It would have been obvious to one of ordinary skill in the art to modify Shaffer et al by including with fan as taught by Hansen for the purpose of providing a force to move the material so that the apparatus can operate. Hansen teaches a filter for filtering the gas exiting the spray tower (13, fig. 2, 10, fig. 1) for the purpose of removing

particulates form the exhaust. It would have been obvious to one of ordinary skill in the art to modify Shaffer et al by including a filter for filtering the gas exiting the spray tower as taught by Hansen for the purpose of removing particulates from the exhaust so that the exhaust does not contain any product and waste is reduced. Shaffer et al in view of Hansen discloses applicant's invention substantially as claimed with the exception of the spray drying plant produces particles of 50-1000 micrometer. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have 50-1000 micrometer particles because Applicant has not disclosed that the size of the particles provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with either the particles of Shaffer et al or the claimed particles because both particles perform the same function equally well.

Allowable Subject Matter

Claims 19-22, and 26 are allowed.

Claims 14-17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth B Rinehart whose telephone number is 703-308-1722. The examiner can normally be reached on 7:30-4:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached on 703-308-1935. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0861.

KBR

Ira S. Lazarus
Supervisory Patent Examiner
Group 3700